IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
February 8, 2007 Session

RICK PHILLIPS, ET AL. v. TENNESSEE DEPARTMENT OF TRANSPORTATION

Appeal from the Chancery Court for Davidson County
No. 04-886-III Ellen Hobbs Lyle, Chancellor

No. M2006-00912-COA-R3-CV - Filed on April 26, 2007

The landowner sought a zoning change, from residential to commercial, of two tracts of land located adjacent to the interstate, which the local planning commission granted. The landowner then filed billboard applications with the Tennessee Department of Transportation. The inspector for the agency determined that the land had been illegally spot zoned for the purpose of outdoor advertising, and therefore denied the two billboard applications. The landowner requested an administrative hearing, after which the Administrative Law Judge instructed that the agency grant the applications. The agency appealed the ruling to its Commissioner. The case was remanded back to the Administrative Law Judge, who then found that the property was spot zoned for the purpose of outdoor advertising and upheld the denial of the landowner's applications. The landowner appealed, and the Commissioner of the Tennessee Department of Transportation affirmed the decision. The landowner then appealed to the Chancery Court of Davidson County. The trial court affirmed the agency's decision to deny the billboard applications. The landowner appealed. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

WILLIAM B. CAIN, J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S., and FRANK G. CLEMENT, JR., J., joined.

Irma Merrill Stratton, Memphis, Tennessee, for the appellants, Rick Phillips, Lamar Advertising and William H. Thomas, Jr.

Michael E. Moore, Acting Attorney General; Larry M. Teague, Deputy Attorney General, for the appellee, Tennessee Department of Transportation.

OPINION

I. FACTUAL BACKGROUND

On June 18, 1998, Appellant[1] filed applications with the Tennessee Department of Transportation ("Appellee") to erect two billboards on two tracts of land (approximately two acres each) adjacent to I-40 in Fayette county. Prior to filing such applications, on May 12, 1998, Appellant sought approval from the Fayette County Regional Planning Commission to rezone the property from R-1 (Rural Residential) to B-3 (Community Business). The Commission rezoned the property to commercial. On June 29, 1998, Appellee sent one of its inspectors, Robert Shelby ("Shelby") to inspect the land on which Appellant wished to erect the billboards. Upon inspection, Shelby concluded that the tracts of land had been illegally spot zoned for commercial use for outdoor advertising purposes. On July 9, 1998, Appellee denied Appellant's applications.

On July 16, 1998, Appellant requested an administrative hearing on the matter. The hearing took place on May 4 and 21, 1999, before an Administrative Law Judge ("ALJ"). Following the trial on the merits, the ALJ made several findings of fact and conclusions of law, and issued an Initial Order, dated August 17, 1999, instructing Appellee to issue the permits for both billboard applications. Such Order was based on the ALJ's conclusion that Shelby relied solely on his field inspection and did not consider the Fayette County Regional Planning Commission's reasons for rezoning the property, thereby making his decision and recommendation to deny the applications arbitrary and capricious. The ALJ further concluded that as a matter of law, Appellee did not have legal authority to determine whether a piece of property had been spot zoned for outdoor advertising purposes.

On August 20,1999, Appellee appealed the ALJ's Initial Order. While such appeal was pending, Appellant erected billboards on the property without permits. On December 17, 1999, the Commissioner of the Tennessee Department of Transportation remanded the case back to the ALJ. In his Order, the Commissioner made several conclusions of law and instructions on remand, including, but not limited to: (1) Appellee's authority to regulate billboards is established under state and federal law (specifically, Tenn. Code Ann. § 54-21-101 *et seq.* and 23 U.S.C. § 131); (2) Appellee has established criteria for the effective control of outdoor advertising through its internal rules[2]; (3) Appellee has the right to look beyond the local zoning ordinance in making its outdoor

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[1] During the duration of this case, four parties (Rick Phillips, Delite Outdoor Advertising, Lamar Outdoor Advertising, and William Thomas) were intermittently involved, by way of land ownership and advertising changes, as Appellants/petitioners. Therefore, to avoid confusion, they will be collectively referred to as Appellant in this opinion.

[2] Tennessee Administrative Regulations state as follows:

T.A.R. § 1680-2-3-.02. Definitions.

. . . .
(27) *Zoned Commercial or Zoned Industrial*, means those areas in a comprehensively zoned political subdivision set aside for commercial or industrial use pursuant to the state or local zoning regulations, but shall not include strip zoning, spot zoning, or variances granted by the local political subdivision strictly for outdoor advertising.

T.A.R. § 1680-2-3-.03. Criteria for the erection and control of outdoor advertising.

(1) Restrictions on Outdoor Advertising adjacent to Interstate and Primary Highways:
(a) Outdoor Advertising erected or maintained within 660 feet of the nearest edge of the right-of-way

(continued...)

advertising determinations; and (4) state agencies responsible for regulating outdoor advertising are not required to accept a zoning ordinance on its face, and should examine the actual and contemplated land uses of the location and the motivation behind the zoning action. The Commissioner specifically stated that the ALJ erred in: (1) holding that Appellee does not have the authority to look beyond a zoning ordinance to determine whether a piece of property has been spot zoned, and (2) that Shelby's determinations were arbitrary and capricious.

The matter was again heard before the ALJ on February 26, 2001. By Order dated October 17, 2001, the ALJ overruled his August 17, 1999 Order and ruled that Appellant's property was spot zoned for the purpose of outdoor advertising and upheld the denial of Appellant's permits. Further, the ALJ held that Appellants must remove the billboards that had been erected on the land without permits, as they were in violation of Tennessee law[3]. On October 31, 2001, Appellant filed a Petition for Reconsideration, which the ALJ denied on November 14, 2001. On November 29, 2001, Appellant filed an appeal from the ALJ's October 17, 2001 Order. The Commissioner affirmed the ALJ's second ruling by a Final Order issued January 29, 2004, stating that Appellant's "application for an outdoor advertising permit is DENIED and that [Appellant] shall REMOVE the outdoor advertising structure at issue in this matter as provided in the Initial Order."

On February 9, 2004, Appellant filed a Petition for Stay of Final Order, on the basis that the outdoor advertising structures had been in place for approximately six years following the ALJ's Initial Order ruling that the area had not been spot zoned, and that removing the structures prior to a final disposition of the matter would be costly, as would rebuilding them if Appellant was successful on appeal. On February 5, 2004, the Order was stayed pending Appellant's timely filing

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[2](...continued)
and visible from the main traveled way are subject to the following restrictions:
1. Zoning - Outdoor Advertising must be located in areas zoned for commercial or industrial use or in areas which qualify for unzoned commercial or industrial use.

[3] Tennessee Code Annotated states the following in relevant part:

54-21-104. Permits and tags - Fees.

(a) Unless otherwise provided in this chapter, no person shall construct, erect, operate, use, maintain, or cause or permit to be constructed, erected, operated, used, or maintained, any outdoor advertising within six hundred sixty feet (660') of the nearest edge of the right-of-way and visible from the main traveled way of the interstate or primary highway systems without first obtaining from the commissioner a permit and tag.

54-21-105. Failure to comply with preceding section - Effect.

(a) (1) Any person, either owner or lessee, of any outdoor advertising who has failed to act in accordance with the provisions of § 54-21-104 shall remove the same immediately.
(2) Such failure shall render the outdoor advertising a public nuisance and subject to immediate disposal, removal or destruction.
(3) In addition, such failure constitutes a Class C misdemeanor. Each separate day of violation constitutes a separate offense.
(4) In addition, or in lieu of the foregoing, the commissioner may enter upon any property on which outdoor advertising is located and dispose of, remove, or destroy the same, all without incurring any liability for such actions.

of judicial review. Appellant filed a Petition for Judicial Review in the Chancery Court of Davidson County on March 24, 2004.

On September 15, 2005, Appellant filed a Motion to Consider Additional Evidence on the basis that Appellee "has in fact granted permits for billboards erected in the immediate vicinity of the two tracts of land at issue. This is material evidence that [Appellee] considered the zoning in the area appropriate for commercial use and for billboards. . . ." The trial court issued its Order regarding Appellant's Motion to Consider Additional Evidence on November 8, 2005, in which it denied the motion and ruled that the proposed evidence did not meet the materiality standard of 4-5-322(h). The trial court issued its final Order on March 7, 2006, in which it found:

> Consequently, the Court finds that substantial and material evidence exists in the record to support [Appellee]'s findings, as [Appellee] acted within its authority in disregarding the rezoning of the tracts at issue in this case. Both federal law and state law vest [Appellee] with the authority to deny billboard permit applications upon grounds such as those which the Court finds to be present in this case. The Court thus finds that [Appellee] acted pursuant to that authority and pursuant to applicable laws and regulations, both state and federal. The Court also finds that petitioner has not provided sufficient proof to overcome those findings and show that [Appellee]'s findings were in any way unsupported by substantial and material evidence.
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> In denying [Appellant]'s request for judicial review, the Court affirms [Appellee]'s decision to deny [Appellant]'s request for the billboard permits.

Appellant appeals four issues: (1) the trial court's ruling that Appellee did not exceed its authority when it denied the billboard applications due to spot zoning; (2) the trial court's affirmance of the ALJ's decision that the billboard applications should be denied when the ALJ had clear and convincing evidence that the locations were properly zoned for billboards, and that Appellee's decision was (a) in violation of statutory provisions, (b) in excess of Appellee's statutory authority, (c) arbitrary or capricious or characterized by abuse of discretion or unwarranted exercise of discretion, or (d) unsupported by substantial and material evidence; (3) the trial court's denial of Appellant's motion to consider additional evidence, which wrongly excluded evidence and resulted in an erroneous decision; and (4) the Commissioner's misapplication of relevant law to the facts.

II. STANDARD OF REVIEW

The standard of review of administrative proceedings is governed by Tenn. Code Ann. § 4-5-322(h):

> The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if the rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions or decisions are:
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> (1) In violation of constitutional or statutory provisions;
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> (2) In excess of the statutory authority of the agency;
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> (3) Made upon unlawful procedure;
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> (4) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

> (5) (A) Unsupported by evidence that is both substantial and material in the light of the entire record.
> (B) In determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.

Tenn.Code Ann. § 4-5-322(h).

Several cases have interpreted the statute. "[T]he correct test for reviewing the decision of the Commissioner (as well as our review of the chancellor's finding) is whether or not there was substantial or material evidence to support his decision." *Goldsmith v. Roberts*, 622 S.W.2d 438, 439 (Tenn.Ct.App.1981). "The scope of review in this Court is the same as in the trial court, to review findings of fact of the administrative agency upon the standard of substantial and material evidence. . . ." *Gluck v. Civil Serv. Comm'n*, 15 S.W.3d 486, 490 (Tenn.Ct.App.1999). "[T]he 'substantial and material evidence standard' of T.C.A. 4-5-322(h)(5) requires a searching and careful inquiry and subjects the agency's decision to close scrutiny." *Nat'l Counsel on Comp. Ins. v. Gaddis*, 786 S.W.2d 240, 242 (Tenn.Ct.App.1989). Further,

> Courts do not review the fact issues de novo and, therefore, do not substitute their judgement for that of the agency as to the weight of the evidence, *Humana of Tennessee v. Tennessee Health Facilities Comm'n*, 551 S.W.2d 664, 667 (Tenn.1977); *Grubb v. Tennessee Civil Serv. Comm'n*, 731 S.W.2d 919, 922 (Tenn.Ct.App.1987), even when the evidence could support a different result. *Hughes v. Board of Comm'rs*, 204 Tenn. 298, 305, 319 S.W.2d 481, 484 (1958).
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> Tenn. Code Ann. § 4-5-322(h)(5) directs the courts to review an agency's factual determinations to determine whether they are supported by "evidence which is both substantial and material in light of the entire record." An agency's factual determination should be upheld if there exists "such relevant evidence as a reasonable mind might accept to support a rational conclusion and such as to furnish a reasonably sound basis for the action under consideration." *Southern Ry. v. State Bd. of Equalization*, 682 S.W.2d 196, 199 (Tenn.1984); *Sweet v. State Technical Inst.*, 617 S.W.2d 158, 161 (Tenn.Ct.App.1981).
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> The "substantial and material evidence" standard contained in Tenn. Code Ann. § 4-5-322(h)(5) is couched in very broad language. What amounts to substantial evidence is not precisely defined by the statute. In general terms, it requires something less than a preponderance of the evidence, *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620, 86 S. Ct. 1018, 1026, 16 L. Ed. 2d 131 (1966), but more than a scintilla or glimmer. *Pace v. Garbage Disposal Dist.*, 54 Tenn. App. 263, 267, 390 S.W.2d 461, 463 (1965).

Wayne County v. Tenn. Solid Waste Disposal Control Bd., 756 S.W.2d 274, 279-80 (Tenn.Ct.App.1988). Finally, "[t]his court's review of the trial court's decision is essentially a determination of whether or not the trial court properly applied the foregoing standard of review." *Papachristou v. The Univ. of Tenn.*, 29 S.W.3d 487, 490 (Tenn.Ct.App.2000).

III. ANALYSIS

A. Denial of Applications

Spot zoning is the "process of singling out [a] small parcel of land for use classification totally different from that of [the] surrounding area, for [the] benefit of an owner of such property and to [the] detriment of other owners, and, as such, is [the] very antithesis of planned zoning." *Grant v. McCullough*, 196 Tenn. 671, 674 (Tenn.1954); *Crockett v. Rutherford County*, 2002 Tenn. App. LEXIS 545, at *7 (Tenn.Ct.App. July 25, 2002); *Crown Colony Homeowners Ass'n v. Ramsey*, 1991 Tenn. App. LEXIS 609, at *6 (Tenn.Ct.App. Aug. 7, 1991); *Fallin v. Knox County Bd. of Comm'rs*, 656 S.W.2d 338, 343 (Tenn.1983); *Rains v. Knox County Bd. of Comm'rs*, 1987 Tenn. App. LEXIS 2980, at *7 (Tenn.Ct.App. Oct. 9, 1987). The Supreme Court of Tennessee explained why the practice of spot zoning is disfavored:

> The law is well settled that 'spot zoning,' as properly known and understood, and 'spot zoning' ordinances, as properly identified, are invalid on the general ground that they do not bear a substantial relationship to the public health, safety, morals and general welfare and are out of harmony and in conflict with the comprehensive zoning ordinance of the particular municipality.

Fallin v. Knox County Bd. of Comm'rs, 656 S.W.2d 338, 343 (Tenn.1983) (quoting 2 Yokley *Zoning Law and Practice* § 13-3 (1978)).

> It is, therefore, universally held that a 'spot zoning' ordinance, which singles out a parcel of land within the limits of a use district and marks it off into a separate district for the benefit of the owner, thereby permitting a use of that parcel inconsistent with the use permitted in the rest of the district, is invalid if it is not in accordance with the comprehensive zoning plan and is merely for private gain.

Grant v. McCullough, 270 S.W.2d 317, 319 (Tenn.1954) (quoting *Cassel v. Mayor & City Counsel of Baltimore*, 73 A.2d 486, 489 (Md.Ct.App.1950)).

Appellant argues that the Commissioner's decision to deny their application for billboard permits because Appellee's inspector deemed the property to have been spot zoned was incorrect. Appellant maintains that the Court should take into consideration the uses of property surrounding the two parcels at issue. Appellant asserts that the following land uses in existence around the parcels in question prove that Appellee erred in its decision: (1) two tracts of land zoned commercial to the immediate west of the tracts in question; (2) a commercial concrete plant located within three-fourths of a mile; (3) in 1998, the Memphis Metropolitan Planning Organization's transportation plan designated the intersection where the parcels were situated as a "Priority 1" area for the future development of an interchange; and (4) also in 1998, a fire station was under construction within 200 yards of the parcels. Appellee argues that Appellant went before the zoning commission and had the land rezoned specifically in order to utilize the tracts for outdoor advertising. This, by Appellee's standards, is illegal spot zoning.

The ALJ's determination met the requirements of Tenn. Code Ann. § 4-5-322(h). The decision was affirmed because the administrative finding was not in violation of a constitutional or statutory provisions. The finding was not in excess of Appellee's statutory authority. Title 23 of the

Code of Federal Regulations, referred to by both parties in support of their arguments, states the following in relevant part:

> (a) 23 U.S.C. 131(d) provides that signs "may be erected and maintained within 660 feet of the nearest edge of the right-of-way within areas . . . which are zoned industrial or commercial under authority of State law." Section 131(d) further provides "The State shall have full authority under their own zoning laws to zone areas for commercial or industrial purposes, and the actions of the States in this regard will be accepted for the purposes of this Act.
> (b) State and local zoning actions must be taken pursuant to the State's zoning enabling statute or constitutional authority and in accordance therewith. Action which is not a part of comprehensive zoning and is created primarily to permit outdoor advertising structures, is not recognized as zoning for outdoor advertising control purposes.

23 C.F.R. § 750.708(b). Further, Tenn. Code Ann. § 54-21-104 (quoted in footnote three) clearly states that no party may erect outdoor advertising without the Commissioner's permission.

The finding was not made on unlawful procedure, nor was it arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. Shelby based his recommended denial on several factors. Upon remand to the ALJ, Appellee detailed the several factors considered when making a determination of spot zoning: (1) the time of the zoning change in relation to either the purchase of the property or the time the permit application was submitted; (2) the actual use of the land; (3) city or county services; (4) utilities; (5) businesses or industry in the area; (6) planned development in the immediate future; (7) relationship between the requestor of the zoning change and the permit applicant; and (8) topography of the area. Specifically, Shelby testified as follows:

> Q: What was your recommendation to the downtown office on this particular site in 1998?
> A: Denial.
> Q: And what did you base that denial on?
> A: I based it on my – in my opinion the area had been spot zoned or rezoned for the purpose of a billboard.
> Q: And in deciding that do you look for certain criteria?
> A: Yes.
> Q: What is that criteria?
> A: We look at the actual use of the property. The actual use of the surrounding property. The availability of utilities such as electricity, sewer, water, and gas, the ingress, the egress, the availability to get to the property.
> Q: And does it matter, when you make your decision does it matter what the local Planning Commission has done?
> A: It matters, but is not the determining factor.
> Q: What about the County Commission?
> A: Same thing.
> Q: Does it matter what future development plans are for the area?
> A: Most of the time, no.

Further, in its March 7, 2006 Order, the trial court noted the following regarding Appellee's inspection of the tracts at issue:

> [Appellee]'s denial of outdoor advertising permits was based upon the inspection that occurred when its inspector visited and inspected the two tracts of land at issue. The inspector's characterization that the land in question was "spot zoned" specifically for outdoor advertising and therefore unfit for the permits sought was based in part upon the recent rezoning of the parcels for commercial use and the following:
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> - The inspector specifically noted that one parcel (the tract adjacent to Interstate 40 West) contained a large pond, or "marl pit", and was covered with trees and bushes, while the other parcel (adjacent to Interstate 40 East) was comprised of land, possibly former farmland, containing vegetation that had been left to grow on its own for some time.
> - The inspector found no access available from Interstate 40 to either tract, and any potential access to either tract from Hickory Withe Road/SR 196 would be via a steep embankment from the road.
> - According to the inspector's testimony, the location on Interstate 40 West offered no utilities and no visible development, and no utilities were available to the Interstate 40 location either.
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> . . . .
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> Again, regardless of the term employed by the [Appellee] inspector to sum up his findings, [Appellee]'s denial of the permits rests upon these documented observations and do not hinge upon an independent legal significance that the term "spot zoning" may have. Rather, in light of the first-hand observations of [Appellee]'s inspector and the facts surrounding the rezoning of the tracts at issue, this Court does not find that the existence of these other uses in the same general vicinity are sufficient to show that [Appellee]'s findings are unsupported by substantial and material evidence. [Appellant] has therefore not met his burden under Tennessee Code Annotated section 4-5-322.

The finding was supported by evidence that was both substantial and material in light of the entire record. The ALJ had substantial and material evidence to support his determination that the land at issue had been spot zoned for the purpose of outdoor advertising. First, Appellant Phillips' testimony established that his primary purpose behind seeking a zoning change was the possibility of outdoor advertising. At the first hearing in front of the ALJ, Appellant Phillips testified as follows regarding his reasoning behind seeking rezoning:

> A: We're landlocked. We've got two small parcels. I'm trying to maximize the economic benefit of those two parcels . . . . At the time we had this done, I had no particular economic use involved. Although, due to the size of the tracts, outdoor advertising, cellular tower, all those are possibilities. . . .
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> . . . .
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> Q: All right, sir. Now, as you know, Mr. Phillips, the State has charged that this property was rezoned strictly for the use of outdoor advertising. I'm sure the Court wants to know and I would like to hear your thought process – I think you gave us part of that – with regard to why this property was rezoned, sir.

> A: Simply to try to maximize the economic benefit of it at some future point, whether it was not rezoned strictly for – solely for the development of outdoor advertising. That is a vehicle, because of its size and location, that is available for its use, but there are others also.

Second, the physical characteristics of the two tracts of land, detailed by Shelby's inspection findings, make it fairly obvious that they are unsuitable for anything other than outdoor advertising. Third, Appellant's quickness in filing for billboard applications following the rezoning (roughly five weeks) is indicative of his reasoning behind seeking the zoning changes.

B. Motion for Consideration of Additional Evidence

Appellant argues that the trial court erred by refusing to consider additional evidence, and that such refusal resulted in an erroneous decision. Appellant's Motion for Consideration of Additional Evidence requested that the trial court consider evidence that was not contained in the administrative record, specifically, Appellant's affidavit asserting that Appellee had granted permits for billboards erected in the immediate vicinity of the two tracts at issue. Appellant's motion was based on Tenn. Code Ann. § 4-5-322(e), which states:

> If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings or decisions with the reviewing court.

Tenn.Code Ann. § 4-5-322(e). The statute allows the court to authorize that additional evidence be presented to the agency. However, Appellant sought to have the trial court consider additional evidence. Appellant's interpretation of the statute is incorrect; it does not give the trial court authority to consider evidence that is not contained in the administrative record of the case under review. However, even if the trial court could consider additional evidence, the evidence offered by Appellant's affidavit is not material, as required by the statute, due to the site-specific nature of granting and denying billboard applications.

IV. Conclusion

Appellant is owner of two small tracts of land adjacent to I-40 west in Fayette County, which because of geographic location and topography are of little practical use. In an effort to realize some economic return from this property, Appellant sought and received a change of zoning classification from the Fayette County Zoning Authority. The plight of Appellant is appealing to one's sense of fairness under the facts of this case. However, the erection of billboards adjacent to interstate and primary highways in Tennessee is governed by both federal and state law (23 U.S.C. § 131 and Tenn. Code Ann. § 54-21-101, *et seq.*). Statutory authority to regulate billboards and outdoor advertisements adjacent to interstate and primary highways is vested in the Tennessee Department of Transportation, and the limitations of the power of the judiciary under the Uniform Administrative

Procedures Act, codified as Tenn. Code Ann. § 4-5-101 to § 4-5-325, are not in doubt. The standard of judicial review is set by Tenn. Code Ann. § 4-5-322(h) and we are bound by that standard.

> We use the same standard to review administrative decisions that trial courts use. *See Estate of Street v. State Bd. of Equalization*, 812 S.W.2d 583, 585 (Tenn.Ct.App.1990). When we are reviewing the evidentiary foundation of an administrative decision under Tenn.Code Ann. § 4-5-322(h)(5), we are not permitted to weigh factual evidence and substitute our own conclusions and judgment for that of the agency, even if the evidence could support a different determination than the agency reached. *See* Tenn. Code Ann. § 4-5-322(h); *Humana of Tenn. v. Tennessee Health Facilities Comm'n*, 551 S.W.2d 664, 667 (Tenn.1977).

Ware v. Greene, 984 S.W.2d 610, 614 (Tenn.Ct.App.1998). *See also Mosely v. Tenn. Dept. of Commerce & Ins.*, 167 S.W.3d 308 (Tenn.Ct.App.2004).

The chancellor carefully considered the record in this case and concluded that the actions of the commissioner were supported by substantial and material evidence. We agree with the chancellor. It does not matter that appealing substantial and material evidence would support a contrary conclusion.

The judgment of the trial court is affirmed and the case remanded for such further proceedings as may be necessary. Costs of the cause are assessed to Appellant.

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WILLIAM B. CAIN, JUDGE